IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 1564 (SS) of 2005

Ramesh Kumar Bangari **.....Petitioner.**

Versus

State of Uttaranchal
and others **.....Respondents**

Approved for reporting

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~~Not approved for reporting~~

Date of Decision : February 26, 2007

Initial of Judge

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IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1564 (SS) of 2005

Ramesh Kumar Bangari,
S/o late Sri Bachey Singh Bangari,
R/o Village – Poonakot,
Post – Jhimar, Molla Salt,
District – Almora. **.....Petitioner.**

Versus

1. State of Uttaranchal through Secretary, Education, Government of Uttaranchal, at Dehradun.
2. Director of Education, Government of Uttaranchal at Dehradun.
3. Joint Director of Education, Kumaon Mandal, Nainital.
4. District Education Officer, District – Almora.
5. Principal, Government Intermediate College, Manila, District –Almora.

.....Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri B. S. Negi, learned counsel for the petitioner and Sri N.P. Shah, learned Standing Counsel for State of Uttarakhand on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. *to issue the writ, order or direction in nature of Certiorari quashing the impugned orders dated 18.07.2005 and 20.09.2005 (Annexure No. 5 and 6 to this writ petition).*
2. *to issue the writ, order or direction in the nature of Certiorari quashing the impugned order dated 14.07.2005 the copy whereof has not been to the petitioner.*

3. *to issue the writ, order or direction in the nature of Mandamus directing the respondents to consider and give appointment on compassionate appointment to the petitioner in view of the recommendation letter dated 14.07.2000 (annexure no. 1 to this writ petition) on a suitable post as for the rules.*

4. *to issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper.*

5. *issue award the cost of the writ petition in favour of the petitioner..*

Vide order 18.07.2005, District Education Officer, Almora directed the Principal, Government Intermediate College, Manila, District – Almora not to forward any matter relating to compassionate appointment to the Directorate where appointment is being sought after five years from the date of death of the employee.

By letter dated 20.09.2005, District Education Officer, Almora has informed the petitioner that since there are directions from the Government not to forward any matter relating to compassionate appointment to the Directorate where appointment is being sought after five years from the date of death of the employee so it would not be possible for the Department to provide him appointment.

The stand of the petitioner is that petitioner's father – Sri Bachey Singh Bangari died on 15.08.1991 while serving as Assistant Teacher LT Grade, Government Intermediate College, Manila, District – Almora.

From perusal of record, it is clear that petitioner applied for compassionate appointment under U.P. Recruitment of

Dependents of Government Servants Dying in Harness Rules, 1974, after lapse of five years of his father's death.

On 09.11.2000, State of U.P. was bifurcated and State of Uttarakhand came into existence. After State of Uttarakhand came into existence, petitioner approached respondent no. 5 for his appointment under Dying in Harness Rules, who in turn informed the petitioner that vide order 14.07.2000, the then Director or Education, U.P., Allahabad has directed the then Joint Director, Education, Kumaon Mandal, Nainital to give appointment to the petitioner on compassionate ground.

Petitioner has submitted that he was never informed about this letter and thereafter, petitioner sent a letter on 23.04.2005 to respondent no. 4 – District Education Officer, Almora requesting him to provide appointment in view of the recommendation made in letter dated 14.07.2000 of the then Director of Education.

Principal, Government Intermediate College, Manila, District – Almora forwarded the application of the petitioner on 30.04.2005 to District Education Officer, Almora, who summoned the necessary document from Principal, Government Intermediate College, Manila, District – Almora vide letter dated 04.05.2005. In the said letter it is also mentioned that due to certain reasons compassionate appointment could not be given to the petitioner. However, vide letter dated 18.07.2005 and 20.09.2005 District Education Officer, Almora has informed the petitioner that appointment on compassionate ground cannot be given to the petitioner as he has applied after five years of his father's death.

Learned counsel for the petitioner has submitted that appointment could not be provided to the petitioner due to

carelessness of respondents for which petitioner cannot be penalized.

Respondents have filed counter affidavit. In para 5 of the counter affidavit respondents have submitted that petitioner applied under Dying in Harness Rules in the year 2000 after nine years of his father's death and thus, the application of the petitioner is highly belated and as such, the same was rejected by the department on 20.09.2005.

Petitioner has submitted that at the time of his father's death, petitioner was minor.

It is also not disputed that petitioner has applied after nine years of his father's death and during this period neither the petitioner nor any other member of the petitioner's family had applied for appointment under Dying in Harness Rules.

Petitioner could not show any document which shows that relaxation was granted by the Competent Authority for applying even after five years of his father's death.

Relevant part of Para 12 of counter affidavit is quoted as under:

"As far as the letter dated 14.07.2000 (annexure no. 1 to the writ petition) is related in this regard it is stated that vide the said letter the Director of Education, U.P. directed the Joint Director of Education, Kumaon Mandal, Nainital to consider the application of the petitioner for appointment on compassionate ground under Dying in Harness Rules. In this regard it is relevant to mention here that according to prevailing Dying in Harness Rules the dependent of the deceased employee must have applied within a period of five years from the date of the death of employee. If he applies after five years, in such condition the appointment cannot be given without relaxation of time and the power to give relaxation of time vests in the State Government only"

Learned counsel for the respondents has placed reliance on the judgement of Hon'ble Apex Court passed in the case Umesh Kumar Nagpal Vs. State of Haryana and others reported in 1994 (4) SCC 138 wherein the Hon'ble Supreme Court has held that the object of the compassionate is to enable the penurious of the deceased employee to tide over the sudden financial crisis and not to provide employment. Mere death of an employee does not entitle his family to compassionate appointment. While providing the compassionate appointment the necessary factors such as object of compassionate appointment and financial conditions of the family must be taken into account. The Authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death.

In para 6 the aforesaid judgment the Hon'ble Supreme Court has held that compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not vested right which can be exercised at any time in the future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered after the lapse, of long time and after the crisis is over.

It is not disputed that father of the petitioner died on 15.08.1991 and petitioner applied for compassionate appointment in the month of April, 2000.

Rule 5 (1) of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 provides as under:

"Recruitment of a member of the family of the deceased *– In case a Government Servant dies in harness after the commencement of these rules and the spouse of the deceased Government Servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purpose be given a suitable employment in the Government service on a post except the post which is within the purview of the Uttar Pradesh public Service Commission, in relaxation of the normal recruitment rules if such person –*

i. fulfils the educational qualification prescribed for the post.

ii. is otherwise qualified for the Government service and

iii. makes the application for employment within five years from the date of the death of the government servants

Provide that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just equitable manner."

It is clear from the above, that the application shall be made within 5 years from the death of the Government Servant. It is provided in the aforesaid rule that State Government can relax time limit, if the State Government is satisfied.

It is undisputed that application has been moved by the petitioner after nine years of his father's death and there is no

proof that relaxation was granted to him by State Government as alleged by him.

In any case there is no justification after expiry of 16 years to direct the respondents to consider the claim of the petitioner for compassionate appointment under Dying in Harness Rules. As the object of compassionate appointment is to give immediate relief to the family of deceased employee to tide over the sudden financial crisis. Object of the Rule could not be fulfilled by giving direction to the respondents to provide appointment to the petitioner after lapse of 16 years.

Writ petition lacks merit, as such, is dismissed. Civil Misc. Application No. 9054 of 2005 is rejected accordingly.

(M.M. Ghildiyal, J)

February 26, 2007
Sksharma